

**POSITION PAPER OF THE MICHIGAN WATERFRONT ALLIANCE (MWA)  
REGARDING HB 4463 & HB 4463  
March 20, 2007**

Thank you, Chairman Sheltrown, for allowing me the opportunity to address the committee this morning. Good morning, my name is Bob Frye and I am the President of the Michigan Waterfront Alliance. I am here today to provide you with some general background regarding our position on the proposed legislation involving public road ends at lakes.

**1. The Legislation Would be Unconstitutional**

While it is true that the Legislature can effectively “overturn” court decisions involving existing statutes by amending the statute, the Legislature cannot take away property rights and deprive a person or entity of property without due process and without paying compensation—that would be unconstitutional. For the overwhelming majority of road ends in Michigan, the adjoining riparian property owners own the land under the public road right-of-way/easement to the center thereof. See *Shell Oil v Village of Kalkaska*, 433 Mich 348 (1989); *Morrow v Bott*, 203 Mich App 324 (1994); *Loud v Brooks*, 241 Mich 452 (1928); and *Thies v Howland*, 424 Mich 282 (1985). Accordingly, attempting to broaden the original dedication legislatively in order to allow permanent boat moorage, private dockage, etc., would be invalid and an unconstitutional taking of the property rights of the adjoining riparian landowners who own the land under the road right-of-way or easement. The extent or burden of that easement cannot be increased by the Michigan Legislature or a local government without due process and without paying the adjoining property owners for the additional burden on their underlying soil. Additionally, the property rights as to dedicated properties within a plat cannot be changed by legislative fiat.

**2. The Legislation Would Be Invalid**

In *Lyon Township v Higgins Lake Property Owners Association* (unpublished Michigan Court of Appeals Case No. 265162, dated April 11, 2006), both the trial court below and the Michigan Court of Appeals held that Lyon Township could not lawfully broaden the scope of allowable usage rights for road ends by ordinance. Thirteen years earlier in *Jacobs v Lyon Twp*, 199 Mich App 667 (1993), the Court of Appeals also thwarted an attempt by Lyon Township to do essentially the same thing which Lyon Township attempted to do more recently in the 2006 case—that is, unlawfully attempt to expand usage rights to road ends by legislation. Just as Lyon Township could not constitutionally expand usage rights at public road ends by ordinance, neither can the Michigan Legislature constitutionally legislatively expand the usage rights at public road ends by legislation.

**3. It Would be an Improper Attempt to Overturn a Century of Case Law and Common Law as Determined by the Michigan Court of Appeals and Michigan Supreme Court**

These bills are a blatant attempt to eliminate over a century of clear Michigan case law including, but not limited to:

- *Jacobs v Lyon Twp*, 199 Mich App 667 (1993)
- *Higgins Lake Property Owners Ass’n v Gerrish Twp*, 255 Mich App 83 (2003)
- *Lyon Township v Higgins Lake Property Owners Association*, (unpublished Michigan Court of Appeals, Case No. 265162, dated April 11, 2006)

**4. These Bills Would be Unworkable**

Under this legislation, townships could “subcontract” with private neighborhood associations and individuals, who would then operate the floating “marinas” at public road ends. It is not difficult to predict how that would work out. Furthermore, it would also likely be unconstitutional to allow a private association or individual to have such control over a public property. At the very least, it would be undesirable. If these bills allow local governments to permit boat marinas at public road ends, local municipalities could not favor one group over another. Accordingly, members of the public who do not even own property in the vicinity of the public road end involved would have just as much legal right to have use of scarce road end boat slips as a backlotter who owns property a short distance away.